

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	MB Docket No. 07-42
Leased Commercial Access)	

**COMMENTS IN SUPPORT OF THE UNITED CHURCH OF CHRIST'S REQUEST
TO OVERRIDE THE ACTION
OF THE OFFICE OF MANAGEMENT AND BUDGET AND
TO MODIFY THE COMMISSION'S *REPORT AND ORDER***

I, Gerald J. Kenney, Jr., a leased access programmer, submit the following comments in support of the request filed by Media Access Project (MAP") on behalf of the United Church of Christ that the Commission override the disapproval action of the Office of Management and Budget ("OMB") regarding the Commission's requested revision to the information collection in this proceeding.

The OMB claimed that the commission did not demonstrate that: **the need exists for reducing the time-frame in which operators have to provide potential programmers with information from 15 days to 3 days.**

I know of very few businesses that could survive in today's competitive environment if they had to wait 15 days to get information from suppliers. Most of the information that Leased Access Programmers require is 'boiler plate' standardized information that can be provided immediately by email or by putting it in an envelope and mailing it. Three days is more than adequate. Also, every time a leased access programmer asks another question, the cable operators seem to restart the 15 day clock. The 15 days is routinely used as a stalling tactic by the cable operators who have the requested information at their fingertips but delay in sending it because they consider the leased access programmers competitors for ad dollars.

The cable operators certainly don't think that 15 days is an acceptable time to reply to inquiries from potential cable, phone or Internet subscribers. Many of them have call centers that are open around the clock to provide information over the phone to potential subs. Why are leased access programmers treated as second class customers and relegated to do business on a time table that is more fitting to the horse and buggy era.

Most Leased Access Programmers are very small family businesses that have substantial life investments in time and equipment and are burdened by cable operators who use the 15 day response period as an excuse to slow down and discourage the competition. In fact, I think they have to work a little harder to drag out their responses for up to 15 days.

The OMB claimed that the commission did not demonstrate that: **it had taken reasonable steps to minimize the burden on respondents who will have to hire new staff to comply with the reduced deadline.**

The reduced deadline is more than enough time to respond since most of the information that is requested is boiler plate and can be emailed automatically if desired.

The OMB claimed that the commission did not demonstrate that: **the practical utility and need for increased paperwork exists for non-bona fide inquiries:**

Who is a bona fide inquirer? With today's technology, cable operators seem to fear anyone that has a camcorder and a desktop editor, thinking that they can produce a TV program and compete with them for advertising dollars. I read in the trade journals that many cable operators are worried about the 'flood gates' being opened from leased access programmers. Yet the same cable operators can barely get viewers to send in their amateur home videos when they air them for free.

Any leased access programmer, in order to survive, must produce programming that is of sufficient quality that it will attract an audience and produce resources to pay for the cost of carriage too. That is easier said than done.

Even when they get their airtime for free, often cable operators cannot make money on local origination except for local news, and many of them will not even disclose whether or

not those operations are profitable. Maybe they fear that leased access programmers can do it more efficiently even with the added burden of carriage costs.

It is not up to the cable companies to decide who is bona fide and who is not. That is a function of the market place. If the applications for carriage are simplified and standardized as they should be, there will be no additional burden on the cable operators to respond to even a flood of inquiries from so-called non-bona fide inquirers. After all isn't that what leased access was intended to do, to assure widest the possible diversity of information sources are made available to the public.

Every business deals with non-qualified lookers. That is a part of the nature of all businesses. How can we bring new programmers and more diversity of information to the public if we only deal with established so-called bona fide programmers?

Ironically, it is the cable operators who have created mountains of needless paperwork in the application process as a means of slowing down and discouraging leased access programmers under the guise of attempting to determine who is bona fide and who is not.

Here is a very small sample of questions from an 8 page application for leased access that I received from Brighthouse Networks in Deland, Florida.

_____ **Example #1** _____

“II BACKGROUND INFORMATION

- A. Has the applicant (including parent corporation, if applicable) or any principle ever been convicted in a criminal proceeding (felonies or misdemeanors) or is applicant or such other person now a party to a proceeding in which such offense is charged? Yes or No.

If yes attach separate statement providing specifics such as date, court sentence or fine, ect.”

_____ **Example #2** _____

“III FINANCIAL INFORMATION

Pleased describe in detail applicant’s financing for the commercial use proposal. Use separate sheets, where necessary.

A. Source of financing

1. Equity – What is the source of and amount of equity capital?
2. Debt- what are the sources and amounts of debt?
3. Name and title of officer in bank or lending institution who may be contacted regarding the financing for this project.

4. Please include copies of all commitment letter, letters of credit, etc. which support the financial [sic] of this project.
- B. Financial (Expense) Projections – Indicate the cost and expenses you expect to incur during the term of this proposal. Do not include the cost of carriage on this cable system.
- C. Financial (Income) Projections – Indicate the revenues you expect to receive during the term of this proposal, and include all sources of funds.
- D. Provide 3 credit references (other than a banking institution).”

The above is from an application in which I never requested a line of credit from the cable company.

One very sure way to make certain that cable operators are not over burdened with increased paperwork would be to **standardize the application** for carriage as a matter of regulation. If cable operators fear a large amount of excess paperwork it is due to them asking questions to which they have no legitimate need to know.

Much of what they ask seems to be to learn more about how a particular leased access programmer is conducting his or her business, perhaps as a way to compete with them.

A standard application will streamline the process and insure fairness and reduce undue paper work on the leased access programmer and the cable operator as well.

Such application should assume prepaid programming and should only ask:

Name of applicant and principles

State of Incorporation, if applicable etc.

Address, Phone, ect.

Whether or not the applicant is affiliated with the cable operator.

Basic Program Information: Program Length, Delivery Method

It could include a statement that must be acknowledged that **“leased access programming may not include obscenity, indecency or nudity”**.

If a programmer requests a line of credit, that should be a separate application. Leased access programmers should be informed on the application that they are not required to apply for credit from the cable operator and should be informed of their **basic rights** under FCC regulations and **how and where to file a complaint** if they feel they are being treated in a unlawful manner.

The above will insure that cable operators will not be burdened with undue paperwork (in fact it will lower their paper work from most of their current practices) and will increase the access to information diversity as the law requires.

Respectfully submitted,

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